IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15013 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATHALAL JETHABHAI DHOLARIA LEGAL HEIR OF DECD KALIBEN & 6 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR VIMAL M PATEL for Petitioner(s) : 1 - 7.
MR PD BHATE ASST GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/09/2005

ORAL JUDGMENT

1. Rule. Shri P.D.Bhate, learned AGP waives service of rule on behalf of the respondent – State Authorities.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Secretary, Revenue Department (Appeals), State of Gujarat dated 31.8.2003 passed on 1.7.02 in Revision Application No.19 of 1997 in dismissing the same and confirming the order passed by the Collector, Rajkot dated 31.7.97 in so far as it relates to quashing and setting aside the entry No.59 with respect to the land in question.

3. It appears from the record that the land in question was owned by one Jethabhai Virabhai Dholariya deceased father of the petitioners Nos.1 to 4 bearing Survey No.336 paiki and it was owned as HUF property situated at Rajkot. It is the case of the petitioners that son of the deceased Nathalal Jethabhai Dholaria got his share admeasuring 4193-67 sq.mts and the remaining land continued as the HUF property. It appears that with regard to the land the Urban Land (Ceiling and Regulation), Act, 1976 (hereinafter referred to as the “ULC Act” for short

and brevity) was made applicable and therefore, Form under Section-6(1) of the ULC Act was filled in and the Competent Authority and the Deputy Collector, ULC Rajkot by its order dated 6.4.90 declared that there is no excess vacant land. It appears from the record that the said order passed by the competent authority, ULC was taken under suo moto review by the State Government under Section-34 of the ULC Act and the same came to be confirmed by the Deputy Secretary, Revenue Department by its order dated 11.10.1991. It appears from the record that thereafter on the basis of the registered partition deed, Regular Civil Suit No.1247 / 1993 came to be filed and decree was passed by the learned Civil Judge (SD), Rajkot declaring division of property amongst the petitioners Nos.1 to 3 and 5 to 7. It appears from the record that necessary entry was mutated in the record of rights on the basis of the above judgment and decree being Entry No.59 effecting respective shares of the petitioners in question. The said entry was taken under suo motu revision by the District Collector, Rajkot and a show cause notice came to be issued and the petitioners were required

to show cause why the said entry should not be set aside as the same was in breach of provisions of the ULC Act, more particularly Section-42 of the Act. The petitioners replied to the said show cause notice and had submitted that as the entry in question i.e. Entry No.59 is mutated on the basis of the decree which was on the basis of the registered partition and that even the competent authority under the Urban Land Ceiling Act had declared that there is no excess vacant land and the said order also came to be confirmed by the State Government under Section-34 of the Urban Land Ceiling Act and therefore, it is requested to withdraw the show cause notice. Inspite of the aforesaid facts and circumstances, the Collector, Rajkot by its order dated 31.7.1997 passed in Land Revision NO.108 /(6)/2 of 1996 set aside the entry No.59 by holding that before mutating the name of the petitioners on the basis of the partition, the competent authority was not informed as required under Section-42 of the ULC Act and therefore, the same is in breach of provisions of the U.L.C. Act. Being aggrieved and dissatisfied with the order passed by the Collector, Rajkot dated 31.7.1997 in

setting aside the Entry No.59, the petitioners preferred Revision Application No.19 / 1997 before the Secretary, Revenue Department (Appeals), State of Gujarat which came to be dismissed by Secretary, Revenue Department (Appeals), State of Gujarat by judgment and order dated 31.8.2003 / 1.7.04. Being aggrieved and dissatisfied with the judgment and order passed by the Secretary, Revenue Department (Appeals), State of Gujarat dated 31.8.2003 / 1.7.2004 passed in Revision application No.19 of 1997, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri Vimal Patel, learned advocate appearing on behalf of the petitioners reiterated what was stated by them before the Collector in reply to the show cause notice and has submitted that names of the petitioners by way of Entry No.59 was mutated in the record of rights on the basis of the decree passed by the competent Civil Court and the same was not required to be set aside by the Collector, more particularly, when the competent authority under the

ULC Act has declared that there is no excess vacant land and the said order came to be confirmed by the State government under Section-34 of the ULC Act and more particularly, when the ULC Act has already been repealed. Under the circumstances, it is submitted that the Entry No.59 could not have been set aside by the Collector on the ground that same was breach of provisions of ULC Act, more particularly, Section-42 of the Act and therefore, it is requested to allow the present special civil application.

5. Shri P.B.Bhate, learned AGP while supporting the order passed by the Collector, Rajkot as well as the Secretary, Revenue Department (Appeals), State of Gujarat has submitted that the petitioners were required to inform the competent authority under the ULC Act under Section-42 of the Act with regard to the change which was not done and the names of the petitioners were mutated in the record of rights which was not proper and legal and therefore, the same has been rightly quashed and set aside by the Collector, Rajkot confirmed by the Secretary, Revenue Department (Appeals), and

therefore, it is requested to dismiss the present Special Civil Application .

6. Heard learned advocates appearing on behalf of the parties.

7. It is not in dispute that the competent authority under the Urban Land Ceiling Act declared that there is no excess vacant land. It is also not in dispute that the said order passed by the competent authority under the ULC Act came to be confirmed by the State Government exercising the powers under Section-34 of the ULC Act and therefore, the orders by which it is declared that there is no excess vacant land with regard to the land in question, has been confirmed and is not disturbed till date. Thereafter, on the basis of the decree passed by the competent Civil Court, the names of the petitioners were mutated in the record of rights giving them individual share and on the basis of which, their names came to be mutated and entered into record of rights vide Entry No.59 and said entry came to be set aside by the Collector on the ground

that there is breach of Section-42 of ULC Act. It is also required to be noted that till date there is no proceedings initiated by the State Government and the competent authority with regard to the setting aside the order by which it was declared that there is not excess vacant land. It is also required to be noted that Urban Land Ceiling Act has been repealed. While deciding the RTS proceedings, the Revenue Authorities were required to give effect to the judgment and decree passed by the Civil Court and the revenue authority has no jurisdiction and / or authority to go into the legality and validity of the same. Under the circumstances, when on the basis of the judgment and decree passed by the competent civil court, names of the petitioners were mutated in the record of rights while giving them individual shares as per the judgment and decree passed by the competent civil court and entry No.59 was mutated, it cannot be said that the same was in any way illegal. Under the circumstances, the Entry No.59 was not required to be set aside by the Collector. In fact, while setting aside the Entry No.59, the Collector has gone beyond the scope of RTS proceedings which were not

permissible. Under the circumstances, the order passed by the Collector, Rajkot dated 31.7.1997 confirmed by the Secretary (Appeals), Revenue Department vide its judgment and order passed in Revision Application No.19 of 1997 cannot be sustained.

8. For the reasons stated above, the petition succeeds. The judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 31.8.2003 / 1.7.2004 passed in Revision Application No.19 of 1997 as well as the order passed by the Collector, Rajkot dated 31.7.1997 passed in Revision Application No.108:6:2/96 in so far as it relates to setting aside the Entry No.59 with regard to the land in question are hereby quashed and set aside.

9. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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